

Claimant felt a pop in his neck on February 14, 2001, when he lifted a 300 pound manhole cover while working for the respondent. On the date of the accident, claimant notified respondent's owner Dave Turner of the accident. The day after the accident, February 15, 2001, claimant was in so much pain he again called Mr. Turner and told Mr. Turner that he had to attempt to get some relief from the pain. Claimant then went on his own to a local chiropractor.

Claimant provided the chiropractor with a history of lifting a manhole cover yesterday at work and feeling pain and discomfort in his neck plus losing the feeling in both of his arms. Claimant received adjustments from the chiropractor on February 15, 2001, and on March 21, 2001. This gave claimant some temporary relief.

Claimant eventually came under the treatment of orthopedic surgeon Robert L. Eyster, M.D., who was authorized by respondent's insurance carrier.¹ Dr. Eyster referred claimant to David L. Dugan, M.D. who is a pain management physician. Dr. Dugan first saw claimant on May 29, 2001. He diagnosed claimant with cervical radiculopathy with a bulging disc and spinal stenosis at C5-6. On May 29, 2001, Dr. Dugan provided claimant with a cervical epidural steroid block. Claimant received a repeat epidural steroid block on July 10, 2001.

Claimant obtained temporary relief from the epidural steroid injections. But he returned to Dr. Dugan for another injection in February 2002 because of increased pain due to the lessening effectiveness of the injection. Dr. Dugan had advised claimant that he could receive a total of three steroid injections as needed for pain management within a one year time period.² After the second injection on July 10, 2001, claimant waited until the pain and discomfort in his neck again worsened before he returned to Dr. Dugan for another epidural steroid injection. But this time the insurance carrier refused to pay for the injection.³

At the time of claimant's February 14, 2001, accident, claimant was also working for another insulation company, High Plains Insulation. On the date of the preliminary hearing, claimant continued to work for High Plains Insulation and had also helped build a garage during the summer of 2001. Both of those jobs required claimant to perform physical labor. But claimant attributed his increasing neck pain to the lessening effects of the steroid injection and not to those physical work activities.

¹ Prel. Hrg. Trans., April 16, 2002, p.5 and p.11.

² Prel. Hrg. Trans., April 16, 2002, claimant's Exhibit 1, March 12, 2002, letter from Dr. Dugan.

³ Prel. Hrg. Trans., April 16, 2002, claimant's Exhibit 1, February 15, 2002, letter from EMC Insurance Companies.

The Board finds, that although claimant continued to perform physical work after the February 14, 2001 accident, there is no evidence that those physical work activities resulted in either a new injury or an aggravation of his preexisting neck condition. Accordingly, the Board concludes that claimant's current need for medical treatment for pain and discomfort in his neck is related to the February 14, 2001, accident while employed by respondent.

Claimant's attorney sent respondent a demand for workers compensation benefits with an attached claim dated February 13, 2002, which was received by the respondent on February 15, 2002. Claimant established through his testimony and Dr. Dugan's March 12, 2002, letter that he had received two steroid injections and if he needed further pain control he could receive another injection within a one year time period. Additionally, the last time authorized treating physician Dr. Eyster examined claimant on May 25, 2001, he notified claimant to return as "symptoms dictate."⁴

There is no evidence in the preliminary hearing record that either Dr. Dugan or Dr. Eyster had determined claimant had met maximum medical improvement. The first time claimant was notified by respondent's insurance carrier that Dr. Dugan was no longer authorized was in February 2002 when claimant contacted Dr. Dugan for another steroid injection. Respondent and its insurance carrier have a positive duty to notify the injured worker, before he or she reaches maximum medical improvement, that the authorized treating physician or his referrals to other physicians are no longer authorized to treat claimant to relieve the effects of the work-related injury. Accordingly, since claimant did not know that either Dr. Dugan or Dr. Eyster were no longer authorized until February 2002, claimant's written claim served on respondent on February 15, 2002, was timely.⁵

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Nelsonna Potts Barnes' April 16, 2002, preliminary hearing Order, should be, and is hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2002.

BOARD MEMBER

⁴ Prel. Hrg. Trans., April 16, 2002, Claimant's Exhibit 1, Dr. Eyster's May 25, 2001, medical note.

⁵ See Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973) and Johnson v. Skelly Oil Co., 180 Kan. 275, 303 P.2d 172 (1956).

c: W. Walter Craig, Attorney for Claimant
James M. McVay, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director